

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

IN RE:

DIANE PERRY

NO. 16-10643 JDW

MOTION FOR RELIEF FROM STAY AND CO-DEBTOR STAY

Comes now Capital One Auto Finance, a division of Capital One, N.A. ("Capital One"), by and through its counsel of record, Byrd & Wiser, and files this its Motion for Relief from Stay and Co-Debtor Stay, pursuant to Sections 362 and 1301 of the Bankruptcy Code, and in support of same would show unto the Court the following, to-wit:

I

The Debtor filed her Chapter 13 Petition on or about February 25, 2016.

II

That Capital One is the holder of a secured claim in the principal sum of \$12,121.22, secured by the Debtor's 2012 Jeep Compass, VIN 1C4NJCBA9CD504974, all as more fully set forth on Exhibit "A" which is attached hereto and incorporated herein by reference. Rodrickus Perry, a non-debtor, is a joint obligor pursuant to the Retail Installment Sale Contract, being Exhibit "A" attached hereto.

III

Capital One would show unto the Court that, pursuant to the Debtor's Chapter 13 Plan, the Debtor proposes to surrender Capital One's collateral.

IV

Capital One would furthermore show that for the reason stated above, adequate cause exists for termination of the Automatic Stay pursuant to Section 362(d) of the Bankruptcy Code as to the Movant, Capital One.

V

Premised upon the above, adequate cause exists for termination of the co-Debtor

stay pursuant to the provisions of Section 1301 of the Bankruptcy Code as to Capital One.

WHEREFORE, premises considered, Capital One would pray that after notice and hearing this Court enter its Order terminating the Automatic Stay and Co-Debtor Stay of Sections 362 and 1301 of the Bankruptcy Code as to the Movant, Capital One, so as to allow it to pursue its rightful remedies as to its subject matter collateral, and that this Court furthermore enter its Order abandoning the subject matter vehicle as property of the estate, and Capital One furthermore prays that it be awarded its reasonable attorney's fees necessitated by the filing of the instant motion, and Capital One prays for such other and further relief as is just and proper in the premises.

Respectfully submitted,

CAPITAL ONE, N.A.

BY: BYRD & WISER

BY: /S/ROBERT ALAN BYRD
MSB #7651
E-Mail: rab@byrdwiser.com

CERTIFICATE

I, ROBERT ALAN BYRD, Attorney for Capital One, N.A., do hereby certify that I have this date transmitted via Electronic Case Filing, as it appears on this date in the court registered e-filers of CM/ECF and/or via U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing Motion for Relief from Stay and co-Debtor Stay to the following:

R. Gawyn Mitchell, Attorney for Debtor, at rgmnotices@gmail.com

Terre Vardaman, Trustee at VARDAMAN13ECF@gmail.com

Office of the U.S. Trustee, at USTPRegion05.JA.ECF@usdoj.gov

WITH A COPY MAILED TO:

Diane Perry, Debtor
1800 Highway 25 South
Starkville, MS 39759

Rodrickus Perry, co-Debtor
1800 Highway 25 South
Starkville, MS 39759

AND

Rodrickus Perry, co-Debtor
2058 Highway 25 South
Starkville, MS 39759

This the 22nd day of April, 2016.

/S/ROBERT ALAN BYRD

[illegible]

OTHER IMPORTANT AGREEMENTS

1. FINANCE CHARGE AND PAYMENTS

- a. How we will figure Finance Charge. We will figure the Finance Charge on a daily basis at the Annual Percentage Rate on the unpaid part of the Amount Financed.
 - b. How we will apply payments. We may apply each payment to the earned and unpaid part of the Finance Charge, to the unpaid part of the Amount Financed and to other amounts you owe under this contract in any order we choose.
 - c. How late payments or early payments change what you must pay. We based the Finance Charge, Total of Payments, and Total Sale Price shown on the front on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.
 - d. You may prepay. You may prepay all or part of the unpaid part of the Amount Financed at any time without penalty. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment.
- if you pay late, we may also take the steps described below.
- b. You may have to pay all you owe at once. If you break your promises (default), we may demand that you pay all you owe on this contract at once, subject to your right to redeem the vehicle described below. Default means:
 - You do not pay any payment on time;
 - You give false, incomplete, or misleading information on a credit application;
 - You start a proceeding in bankruptcy or one is started against you or your property; or
 - You break any agreements in this contract.The amount you will owe will be the unpaid part of the Amount Financed plus the earned and unpaid part of the Finance Charge, any late charges, and any amounts due because you defaulted.
 - c. You may have to pay collection costs. If we hire an attorney who is not our salaried employee to collect what you owe, you will pay the attorney's fee and court costs as the law allows. The attorney's fee will not exceed 15% of the amount you owe.
 - d. We may take the vehicle from you. If you default, we may take (repossess) the vehicle from you if we do so peacefully and the law allows it. If your vehicle has an electronic tracking device, you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you at your expense. If you do not ask for these items back, we may dispose of them as the law allows.
 - e. How you can get the vehicle back if we take it. If we repossess the vehicle, you may pay to get it back (redeem) by paying all payments that are past due when you redeem, any late charges, and any expenses we incurred related to taking the vehicle, holding it, and preparing it for sale. After you redeem, you must make the remaining payments under this contract. Your right to redeem ends when we sell the vehicle.
 - f. We will sell the vehicle if you do not get it back. If you do not redeem, we will sell the vehicle. We will send you a written notice of sale before selling the vehicle. We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney fees and court costs the law permits are also allowed expenses. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us. If you do not pay this amount when we ask, we may charge you interest at a rate not exceeding the highest lawful rate until you pay.
 - g. What we may do about optional insurance, maintenance, service, or other contracts. This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we demand that you pay all you owe at once or we repossess the vehicle, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle. If the vehicle is a total loss because it is confiscated, damaged, or stolen, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.

2. YOUR OTHER PROMISES TO US

- a. If the vehicle is damaged, destroyed, or missing. You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.
- b. Using the vehicle. You agree not to remove the vehicle from the U.S. or Canada, or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it.
- c. Security interest. You give us a security interest in:
 - The vehicle and all parts or goods put on it;
 - All money or goods received (proceeds) for the vehicle;
 - All insurance, maintenance, service, or other contracts we finance for you; and
 - All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest (lien) in the vehicle.
- d. Insurance you must have on the vehicle. You agree to have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. If you do not have this insurance, we may, if we choose, buy physical damage insurance. If we decide to buy physical damage insurance, we may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you which type and the charge you must pay. The charge will be the premium of the insurance and a finance charge equal to the Annual Percentage Rate shown on the front of this contract or, at our option, the highest rate the law allows. If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.
- e. What happens to returned insurance, maintenance, service, or other contract charges. If we obtain a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.

3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES

- a. You may owe late charges. You will pay a late charge on each late payment as shown on the front. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments.
- Spanish Translation: The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.
- Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.
5. Servicing and Collection Contacts. You agree that we may try to contact you in writing, by e-mail, or using prerecorded/artificial voice messages, text messages, and automatic telephone-dialing systems, as the law allows. You also agree that we may try to contact you in these and other ways at any address or telephone number you provide us, even if the telephone number is a cell phone number or the contact results in a charge to you.
6. Applicable Law. Federal law and the law of the state of our address shown on the front of this contract apply to this contract.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

CERTIFICATE OF TITLE

Form 79-001-05-7-1-000

STATE OF MISSISSIPPI

ORIGINAL

VEHICLE IDENTIFICATION NUMBER

1C4NJCBA9CD504974

MAKE

JEEP

YEAR

2012

MODEL

CSP

BODY

4W

TITLE NUMBER

F608078-02

TITLE DATE

07262012

DATE OF FIRST SALE
FOR USE NEW ONLY

NO. CYL.

04

NEW / USED

X

TYPE OF VEHICLE

PASS

PASS.
OR GVW

000

ODOMETER - TENTHS NOT INCLUDED

029734

ACTUAL MILEAGE

OWNER

PERRY DIANE &/OR RODRICKUS
2058 HWY 25 SOUTH
STARKVILLE MS 39759

1ST LIENHOLDER (OR OWNER IF NO LIEN)

CAPITAL ONE AUTO FINANCE
P O BOX 255605
SACRAMENTO CA 95865

DATE:

MONTH | DAY | YEAR

06/18/2012

2ND LIENHOLDER

DATE:

MONTH | DAY | YEAR

LIEN SATISFACTION: THE UNDERSIGNED HOLDER OF ABOVE DESCRIBED LIEN(S) ON THE MOTOR VEHICLE DESCRIBED HEREON HEREBY ACKNOWLEDGES SATISFACTION THEREOF.

1ST LIEN

(LIENHOLDER)

BY

(SIGNATURE AND TITLE)

THIS

DAY OF

20

2ND LIEN

(LIENHOLDER)

BY

(SIGNATURE AND TITLE)

THIS

DAY OF

20



IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND THIS

THE

26 DAY OF

JULY

20

12

7341

0523

CONTROL NUMBER

19341547

MISSISSIPPI DEPARTMENT OF REVENUE

The Mississippi Department of Revenue hereby certifies that on application duly made, the person named herein is registered by this office as the lawful owner of the vehicle described subject to the liens or security interests as may subsequently be filed with the Mississippi Department of Revenue. This certificate of title is issued pursuant to the Mississippi Motor Vehicle Title Law Section 63-21-1, Mississippi Code of 1972, and subject to the provisions thereof.

VOID IF ALTERED